



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATE PLANNING COORDINATION

July 28, 2008

Martia McGinnis
2299 Hartly Road
Hartly, DE 19953

RE: PLUS 2008-06-03; McGinnis Property

Dear Ms. McGinnis:

Thank you for meeting with State agency planners on June 25, 2008 to discuss the proposed plans for the McGinnis property located at 3399 Hartly Road.

According to the information received, you are seeking a rezoning from AR to BG to sell the property for an unspecified commercial use.

This proposal is located in Investment Level 4 according to the Strategies for State Policies and Spending, and is in the outside the growth zone according to the Kent County Comprehensive Plan. **The comments in this letter are technical, and are not intended to suggest that the State supports this rezoning proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct any development or any subdivision thereof on these lands.**

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. If this property is rezoned and sold, the new owners will be required to comply with any Federal, State and local regulations regarding this property. We also note that as Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: David Edgell 739-3090

This project represents a major land development that will result in an unspecified commercial use in an Investment Level 4 area according to the *Strategies for State Policies and Spending*. This project is also located outside the growth zone according to Kent County's certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring a significant commercial use to an area where the State has no plans to invest in infrastructure upgrades or additional services. These business and its patrons will need access to such services and infrastructure as police, and transportation. To provide some examples, the State government funds 100 percent of paratransit services, and the cost of police protection in the unincorporated portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the business matures and the cost of maintaining infrastructure and providing services increases.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed rezoning and any subsequent commercial development on this site.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

Because this development is proposed for a Level 4 Area, it is inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related improvements are deemed appropriate and necessary. The intent is to preserve the open space, agricultural lands, natural habitats and forestlands that are typically found in Level 4 Areas while avoiding the creation of isolated development areas that cannot be served effectively or efficiently by public transportation, emergency responders, and other public services.

DelDOT strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in approved Comprehensive

Plans. We encourage the use of transfer of development rights where this growth management tool is available.

If this development proposal is approved, notwithstanding inconsistencies with the relevant plans and policies, DelDOT will provide further technical review and comments.

The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071

Investment Level 4 Policy Statement

This project is proposed for an Investment Level 4 area as defined by the *Strategies for State Policies and Spending* and is also located outside of a designated growth area in the relevant municipal and County certified comprehensive plans. According to the *Strategies*, this project is inappropriate in this location. In Investment Level 4 areas, the State's investments and policies, from DNREC's perspective, should retain the rural landscape and preserve open spaces and farmlands. Open space investments should emphasize the protection of critical natural habitat and wildlife to support a diversity of species, and the protection of present and future water supplies. Open space investments should also provide for recreational activities, while helping to define growth areas. Additional State investments in water and wastewater systems should be limited to existing or imminent public health, safety or environmental risks only, with little provision for additional capacity to accommodate further development.

With continued development in Investment Level 4 areas, the State will have a difficult, if not impossible, time attaining water quality (e.g., TMDLs) and air quality (e.g., non-attainment areas for ozone and fine particulates) goals. Present and future investments in green infrastructure, as defined in Governor Minner's Executive Order No. 61, will be threatened. DNREC strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in certified Comprehensive Plans. We encourage the use of transfer of development rights where this growth management tool is available.

This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. Of particular concern are ground water issues associated with actual/potential contamination from a Site Investigation and Restoration Branch (SIRB) site, salvage yard, and several inactive Leaking Underground Storage Tank (LUST) sites, as well as tax ditch rights-of-way. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

Water Supply

The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is a Groundwater Management Zone (Pearsons Corner Pseudo) and an Underground Storage Tank associated with Lapinel Pearsons Corner located within 1000 feet of the proposed project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Sediment and Erosion Control/Stormwater Management

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Kent Conservation District. Contact Jared Adkins, Program Manager, at the Kent Conservation District at (302) 741-2600, ext. 3 for details regarding submittal requirements and fees.
- Because of the parcel's location in an impaired watershed, green technology BMPs and low impact development practices should be considered a priority to reduce stormwater flow and to meet water quality goals.

Drainage

- This parcel is located within the Bethesda Tax Ditch watershed. Prong 2 of the Bethesda Tax Ditch is on the north side of the property and has existing tax ditch rights-of-way. Please contact the Drainage office in Georgetown at 1-302-855-1930 to request a review of the tax ditch rights-of-way on the property. It is suggested this review take place before any engineering design is developed for the parcel.
- The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

Site Investigation and Restoration

The Site Investigation and Restoration Branch (SIRB) has determined that there is one SIRB site and one salvage yard within a ½-mile radius of the proposed development. Pearsons Corner (DE-0104) is located .15 miles north east of the proposed project. Cannon Iron and Metal Salvage is located .13 miles north west of the project. Based on the previous agricultural use of the proposed project site, which may have involved the use of pesticides and herbicides, and potential contaminates from the salvage yard, SIRB recommends that a Phase I Environmental Site Assessment be performed prior to development. In addition, should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions.

Underground Storage Tanks

There are four (4) inactive LUST sites located near the proposed project:

Faulkner's Store
Facility #: 1-000145
Project #: K0111111

Faulkner's Shell
Facility #: 1-000145
Project #: K0401018

Lapinel Pearsons Corner
Facility #: 9-000018

Project #: 8610075

Legar's Store

Facility #: 1-000221

Project #: K9204109

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tanks or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that construction specifications would need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel with nitrile rubber gaskets in the contaminated areas.

State Fire Marshal's Office – Contact: Duane Fox 856-5298

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

This Agency has no objection to the re-zoning request. The information provided below shall be considered when plans are being designed.

a. **Fire Protection Water Requirements:**

- For mercantile and business occupancies, water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
- For places of assembly type occupancies, water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements
- Fire Department Connection location must be within 300 feet of fire hydrant.

c. **Accessibility**

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

d. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

e. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Townhouse 2-hr separation wall details shall be shown on site plans
- Note indicating if building(s) is/are to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

Preliminary meetings with Fire Protection Specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Scott Blaier 739-4811

The Delaware Department of Agriculture is not in favor of the proposed rezoning. In addition to a number of nearby environmental concerns, the property is located in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support this type of zoning in this area.

Public Service Commission - Contact: Andrea Maucher 739-4247

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Department of Education – Contact: John Marinucci 735-4055

DOE recognizes that this rezoning request is in level 4 of the State Strategies for Policies and Spending and as such, DOE does not support the approval of projects in level 4 of the State Strategies for Policies and Spending.

This proposed rezoning request is in the Capital School District. This rezoning request is commercial in nature with no apparent impact on educational service delivery or infrastructure and, as such DOE has no further comments regarding this request.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP
Director

CC: Kent County